

1 NAPOLEON GODOY,

2 Petitioner,

3 **ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS**

4 v.

5 CURRY, Warden,

6 Respondent.  
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8 **INTRODUCTION**9 Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus  
10 challenging the denial of parole pursuant to 28 U.S.C. 2254. Respondent was ordered to show  
11 cause why the writ should not be granted. Respondent filed an answer, and petitioner filed a  
12 traverse. For the reasons discussed below, the petition is **DENIED**.13 **STATEMENT**14 In 1993, petitioner was convicted of second-degree murder in Los Angeles County  
15 Superior Court, and he was sentenced to a term of nineteen years to life in state prison. In 2008,  
16 the California Board of Parole Hearings (“Board) found petitioner unsuitable for parole.  
17 Petitioner challenged this decision in unsuccessful habeas petitions filed in all three levels of the  
18 California courts.19 **ANALYSIS**20 Petitioner claims that the denial of parole violated his right to due process because there  
21 was not at least “some evidence” that he would be a danger to society if released. The United

**United States District Court**

For the Northern District of California

1 States Supreme Court has recently held that the Due Process Clause of the Fourteenth  
 2 Amendment to the United States Constitution entitles a California prisoner to only "minimal"  
 3 procedural protections in connection with a parole suitability determination. *Swarthout v*  
 4 *Cooke*, 131 S.Ct. 859, 862 (2011). Specifically, the Due Process Clause only entitles a  
 5 California prisoner to an opportunity to be heard and a statement of the reasons why parole was  
 6 denied. *Ibid.* The transcript of the parole hearing indicates that he had an opportunity to be  
 7 heard and was given a statement of the reasons parole was denied (*see* Resp. Ex. 1, Ex. A). The  
 8 Constitution does not require more. *Ibid.* The court explained that no Supreme Court case  
 9 "supports converting California's 'some evidence' rule into a substantive federal requirement."  
 10 *Ibid.* It is simply irrelevant in federal habeas review "whether California's 'some evidence' rule  
 11 of judicial review (a procedure beyond what the Constitution demands) was correctly applied."  
 12 *Id.* at 863. In light of the Supreme Court's determination that due process does not require that  
 13 there be any amount of evidence to support the parole denial, petitioner's claim challenging the  
 14 sufficiency of the evidence supporting the Board's decision is without merit.

15 **CONCLUSION**

16 The petition for a writ of habeas corpus is **DENIED**. Rule 11(a) of the Rules Governing  
 17 Section 2254 Cases now requires a district court to rule on whether a petitioner is entitled to a  
 18 certificate of appealability in the same order in which the petition is denied. Petitioner has  
 19 failed to make a substantial showing that his claims amounted to a denial of his constitutional  
 20 rights or demonstrate that a reasonable jurist would find the denial of his claim debatable or  
 21 wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of  
 22 appealability is warranted in this case.

23 The clerk shall enter judgment and close the file.

24 **IT IS SO ORDERED.**

25 Dated: November 14, 2011.

  
 26 WILLIAM ALSUP  
 27 UNITED STATES DISTRICT JUDGE

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